

The Committee on the Judiciary moves to amend the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting lieu thereof, the following language:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections designated §17C-1-67 and §17C-1-68; that §17C-5-4, §17C-5-6, §17C-5-7, §17C-5-8 and §17C-5-9 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17C-5-12, all to read as follows:

1 **"ARTICLE 1. WORDS AND PHRASES DEFINED.**

2 **§17C-1-67. Drug.**

3 "Drug" has the same meaning as set forth in section one
4 hundred one, article one, chapter sixty-A of this code, the Uniform
5 Controlled Substances Act, that when taken into the human body can
6 impair the ability of a person to operate a vehicle safely and in
7 compliance with traffic regulations and the laws of the road.

8 **§17C-1-68. Controlled substance.**

9 "Controlled substance" means any substance classified under
10 the provisions of chapter sixty-a of this code, the Uniform
11 Controlled Substances Act, and includes all substances listed on
12 Schedules I through V, inclusive, of article two of said chapter,
13 as revised.

14 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

15 **§17C-5-4. Implied consent to test; administration at direction of**
16 **law-enforcement officer; designation of type of**
17 **test; definition of law-enforcement officer.**

1 (a) Any person who drives a motor vehicle in this state is
2 considered to have given his or her consent by the operation of the
3 motor vehicle to a preliminary breath analysis and a secondary
4 chemical test of either his or her blood or breath, ~~or urine for~~
5 ~~the purposes of determining the alcoholic content of~~ to determine
6 the alcohol concentration in his or her blood, or the presence in
7 the person's body of a controlled substance, drug, or any
8 combination thereof.

9 (b) A preliminary breath analysis may be administered in
10 accordance with the provisions of section five of this article
11 whenever a law-enforcement officer has reasonable cause to believe
12 a person has committed an offense prohibited by section two of this
13 article or by an ordinance of a municipality of this state which
14 has the same elements as an offense described in section two of
15 this article.

16 (c) A secondary test of blood or breath, ~~or urine~~ is
17 incidental to a lawful arrest and is to be administered at the
18 direction of the arresting law-enforcement officer ~~having~~
19 ~~reasonable grounds to believe the person has committed an offense~~
20 ~~prohibited by section two of this article or by an ordinance of a~~
21 ~~municipality of this state which has the same elements as an~~
22 ~~offense described in section two of this article.~~

23 (d) The law-enforcement agency that employs the arresting
24 law-enforcement officer shall designate ~~which type of~~ the secondary
25 ~~test is~~ tests to be administered: ~~Provided, That if the test~~
26 ~~designated is a blood test and the person arrested refuses to~~
27 ~~submit to the blood test, then the law-enforcement officer making~~
28 ~~the arrest shall designate either a breath or urine test to be~~

1 ~~administered. Notwithstanding the provisions of section seven of~~
2 ~~this article, the refusal to submit to a blood test only may not~~
3 ~~result in the revocation of the arrested person's license to~~
4 ~~operate a motor vehicle in this state.~~

5 (e) Any person ~~to whom a preliminary breath test is~~
6 ~~administered~~ who is ~~then~~ arrested shall be given a written
7 statement advising him or her that his or her refusal to submit to
8 the secondary chemical test pursuant to subsection (d) of this
9 section will result in the revocation of his or her license to
10 operate a motor vehicle in this state for a period of at least ~~one~~
11 year forty-five days and up to life.

12 (f) Any law-enforcement officer who has been properly trained
13 in the administration of any secondary chemical test authorized by
14 this article, including, but not limited to, certification by the
15 Bureau for Public Health in the operation of any equipment required
16 for the collection and analysis of a breath sample, may conduct the
17 test at any location in the county wherein the arrest is made:
18 *Provided*, That the law-enforcement officer may conduct the test at
19 the nearest available properly functioning secondary chemical
20 testing device located outside the county in which the arrest was
21 made, if: (i) There is no properly functioning secondary chemical
22 testing device located within the county the arrest was made; or
23 (ii) there is no magistrate available within the county the arrest
24 was made for the arraignment of the person arrested. A
25 law-enforcement officer who is directing that a secondary chemical
26 test be conducted has the authority to transport the person
27 arrested to where the secondary chemical testing device is located.

28 (g) If the arresting officer lacks proper training in the

1 administration of a secondary chemical test, then any other
2 law-enforcement officer who has received training in the
3 administration of the secondary chemical test to be administered
4 may, upon the request of the arresting law-enforcement officer and
5 in his or her presence, conduct the secondary test. The results of
6 a test conducted pursuant to this subsection may be used in
7 evidence to the same extent and in the same manner as if the test
8 had been conducted by the arresting law-enforcement officer.

9 (h) Only the person actually administering or conducting a
10 test conducted pursuant to this article is competent to testify as
11 to the results and the veracity of the test.

12 (i) (1) For the purpose of this article, the term
13 "law-enforcement officer" or "police officer" means: (1) Any
14 member of the West Virginia State Police; (2) any sheriff and any
15 deputy sheriff of any county; (3) any member of a police department
16 in any municipality as defined in section two, article one, chapter
17 eight of this code; (4) any natural resources police officer of the
18 Division of Natural Resources; and (5) any special police officer
19 appointed by the Governor pursuant to the provisions of section
20 forty-one, article three, chapter sixty-one of this code who has
21 completed the course of instruction at a law-enforcement training
22 academy as provided for under the provisions of section nine,
23 article twenty-nine, chapter thirty of this code.

24 (2) In addition to standards promulgated by the Governor's
25 Committee on Crime, Delinquency and Correction, pursuant to section
26 three, article twenty-nine, chapter thirty of this code, governing
27 the qualification of law-enforcement officers and the entry-level
28 law-enforcement training curricula, the Governor's Committee on

1 Crime, Delinquency and Correction shall require the satisfactory
2 completion of a minimum of not less than six hours of training in
3 the recognition of impairment in drivers who are under the
4 influence of controlled substances or drugs other than alcohol.

5 (3) In addition to standards promulgated by the Governor's
6 Committee on Crime, Delinquency and Correction, pursuant to section
7 three, article twenty-nine, chapter thirty of this code,
8 establishing standards governing in-service law-enforcement officer
9 training curricula and in-service supervisory level training
10 curricula, the Governor's Committee on Crime, Delinquency and
11 Correction shall require the satisfactory completion of a minimum
12 of not less than six hours of training in the recognition of
13 impairment in drivers who are under the influence of controlled
14 substances or drugs other than alcohol.

15 (4) That after December 31, 2014, a law-enforcement officer
16 who has not satisfactorily completed the minimum number of hours of
17 training in the recognition of impairment in drivers who are under
18 the influence of controlled substances or drugs other than alcohol,
19 required by subdivisions (2) or (3), may no longer require any
20 person to submit to secondary chemical test of his or her blood for
21 the purposes of determining the presence in the person's body of a
22 controlled substance, drug, or any combination thereof.

23 (j) A law-enforcement officer who has reasonable cause to
24 believe that person has committed an offense prohibited by section
25 eighteen, article seven, chapter twenty of this code, relating to
26 the operation of a motorboat, jet ski or other motorized vessel,
27 shall follow the provisions of this section in administering, or
28 causing to be administered, a preliminary breath analysis and ~~the~~

1 incidental to a lawful arrest, a secondary chemical test of the
2 accused person's blood or breath, ~~or urine for the purposes of~~
3 ~~determining the alcoholic content of~~ to determine the alcohol
4 concentration in his or her blood, or the presence in the person's
5 body of a controlled substance, drug, or any combination thereof.

6 **§17C-5-6. How blood test administered; additional test at option**
7 **of person tested; use of test results; certain**
8 **immunity from liability incident to administering**
9 **test.**

10 Only a doctor of medicine or osteopathy, or registered nurse,
11 or trained medical technician at the place of his or her employment,
12 acting at the request and direction of the law-enforcement officer,
13 may withdraw blood ~~for the purpose of determining the alcoholic~~
14 ~~content~~ to determine the alcohol concentration in the blood, or the
15 presence in the blood of a controlled substance, drug, or any
16 combination thereof. These limitations shall not apply to the taking
17 of a breath test ~~or a urine specimen.~~ In withdrawing blood ~~for the~~
18 ~~purpose of determining the alcoholic content~~ to determine the
19 alcohol concentration in the blood, or the presence in the blood of
20 a controlled substance, drug, or any combination thereof, only a
21 previously unused and sterile needle and sterile vessel may be
22 utilized and the withdrawal shall otherwise be in strict accord with
23 accepted medical practices. A nonalcoholic antiseptic shall be used
24 for cleansing the skin prior to venapuncture. The person tested
25 may, at his or her own expense, have a doctor of medicine or
26 osteopathy, or registered nurse, or trained medical technician at
27 the place of his or her employment, of his or her own choosing,
28 administer a chemical test in addition to the test administered at

1 the direction of the law-enforcement officer. Upon the request of
2 the person who is tested, full information concerning the test taken
3 at the direction of the law-enforcement officer shall be made
4 available to him or her. No person who administers any such test
5 upon the request of a law-enforcement officer as herein defined, no
6 hospital in or with which such person is employed or is otherwise
7 associated or in which such test is administered, and no other
8 person, firm or corporation by whom or with which such person is
9 employed or is in any way associated, shall be in ~~anywise~~ any way
10 criminally liable for the administration of such test, or civilly
11 liable in damages to the person tested unless for gross negligence
12 or willful or wanton injury.

13 **§17C-5-7. Refusal to submit to tests; revocation of license or**
14 **privilege; consent not withdrawn if person arrested**
15 **is incapable of refusal; hearing.**

16 (a) If any person under arrest as specified in section four of
17 this article refuses to submit to any secondary chemical test, the
18 tests shall not be given: *Provided*, That prior to the refusal, the
19 person is given an oral warning and a written statement advising him
20 or her that his or her refusal to submit to the secondary test
21 finally designated will result in the revocation of his or her
22 license to operate a motor vehicle in this state for a period of at
23 least forty-five days and up to life; and that after fifteen minutes
24 following the warnings the refusal is considered final. The
25 arresting officer after that period of time expires has no further
26 duty to provide the person with an opportunity to take the secondary
27 test. The officer shall, within forty-eight hours of the refusal,
28 sign and submit to the Commissioner of Motor Vehicles a written

1 statement of the officer that: (1) He or she had reasonable grounds
2 to believe the person had been driving a motor vehicle in this state
3 while under the influence of alcohol, controlled substances or
4 drugs; (2) the person was lawfully placed under arrest for an
5 offense relating to driving a motor vehicle in this state while
6 under the influence of alcohol, controlled substances or drugs; (3)
7 the person refused to submit to the secondary chemical test finally
8 designated in the manner provided in section four of this article;
9 and (4) the person was given a written statement advising him or her
10 that his or her license to operate a motor vehicle in this state
11 would be revoked for a period of at least forty-five days and up to
12 life if he or she refused to submit to the secondary test finally
13 designated in the manner provided in section four of this article.
14 The signing of the statement required to be signed by this section
15 constitutes an oath or affirmation by the person signing the
16 statement that the statements contained in the statement are true
17 and that any copy filed is a true copy. The statement shall contain
18 upon its face a warning to the officer signing that to willfully
19 sign a statement containing false information concerning any matter
20 or thing, material or not material, is false swearing and is a
21 misdemeanor. Upon receiving the statement the commissioner shall
22 make and enter an order revoking the person's license to operate a
23 motor vehicle in this state for the period prescribed by this
24 section.

25 For the first refusal to submit to the designated secondary
26 chemical test, the commissioner shall make and enter an order
27 revoking the person's license to operate a motor vehicle in this
28 state for a period of one year or forty-five days, with an

1 additional one year of participation in the Motor Vehicle Alcohol
2 Test and Lock Program in accordance with the provisions of section
3 three-a, article five-a of this chapter: *Provided*, That a person
4 revoked for driving while under the influence of drugs is not
5 eligible to participate in the Motor Vehicle Test and Lock Program.
6 The application for participation in the Motor Vehicle Alcohol Test
7 and Lock Program shall be considered to be a waiver of the hearing
8 provided in section two of said article. If the person's license
9 has previously been revoked under the provisions of this section,
10 the commissioner shall, for the refusal to submit to the designated
11 secondary chemical test, make and enter an order revoking the
12 person's license to operate a motor vehicle in this state for a
13 period of ten years: *Provided, however*, That the license may be
14 reissued in five years in accordance with the provisions of section
15 three, article five-a of this chapter. If the person's license has
16 previously been revoked more than once under the provisions of this
17 section, the commissioner shall, for the refusal to submit to the
18 designated secondary chemical test, make and enter an order revoking
19 the person's license to operate a motor vehicle in this state for
20 a period of life. A copy of each order shall be forwarded to the
21 person by registered or certified mail, return receipt requested,
22 and shall contain the reasons for the revocation and shall specify
23 the revocation period imposed pursuant to this section. A
24 revocation shall not become effective until ten days after receipt
25 of the copy of the order. Any person who is unconscious or who is
26 otherwise in a condition rendering him or her incapable of refusal
27 shall be considered not to have withdrawn his or her consent for a
28 test of his or her blood or breath ~~or urine~~ as provided in section

1 four of this article and the test may be administered although the
2 person is not informed that his or her failure to submit to the test
3 will result in the revocation of his or her license to operate a
4 motor vehicle in this state for the period provided for in this
5 section. A revocation under this section shall run concurrently
6 with the period of any suspension or revocation imposed in
7 accordance with other provisions of this code and growing out of the
8 same incident which gave rise to the arrest for driving a motor
9 vehicle while under the influence of alcohol, controlled substances
10 or drugs and the subsequent refusal to undergo the test finally
11 designated in accordance with the provisions of section four of this
12 article.

13 (b) For the purposes of this section, where reference is made
14 to previous suspensions or revocations under this section, the
15 following types of suspensions or revocations shall also be regarded
16 as suspensions or revocations under this section:

17 (1) Any suspension or revocation on the basis of a conviction
18 under a municipal ordinance of another state or a statute of the
19 United States or of any other state of an offense which has the same
20 elements as an offense described in section two of this article for
21 conduct which occurred on or after June 10, 1983; and

22 (2) Any revocation under the provisions of section one or two,
23 article five-a of this chapter for conduct which occurred on or
24 after June 10, 1983.

25 (c) A person whose license to operate a motor vehicle in this
26 state has been revoked shall be afforded an opportunity to be heard,
27 in accordance with the provisions of section two, article five-a of
28 this chapter.

1 (d) The refusal to submit to a blood test is not admissible in
2 a trial for the offense of driving a motor vehicle in this state
3 while under the influence of a controlled substance or drug.

4 **§17C-5-8. Interpretation and use of chemical test.**

5 (a) Upon trial for the offense of driving a motor vehicle in
6 this state while under the influence of alcohol, controlled
7 substances or drugs, or upon the trial of any civil or criminal
8 action arising out of acts alleged to have been committed by any
9 person driving a motor vehicle while under the influence of alcohol,
10 controlled substances or drugs, evidence of the amount of alcohol
11 in the person's blood at the time of the arrest or of the acts
12 alleged, as shown by a chemical analysis of his or her blood or
13 ~~breath or urine~~, is admissible, if the sample or specimen was taken
14 ~~within two hours from and after the time of arrest or of the acts~~
15 ~~alleged~~ the time period provided in subsection (g).

16 (b) The evidence of the amount of alcohol in the person's blood
17 at the time of the arrest or the acts alleged gives rise to the
18 following presumptions or has the following effect:

19 (1) Evidence that there was, at that time, five hundredths of
20 one percent or less, by weight, of alcohol in his or her blood, is
21 prima facie evidence that the person was not under the influence of
22 alcohol;

23 (2) Evidence that there was, at that time, more than five
24 hundredths of one percent and less than eight hundredths of one
25 percent, by weight, of alcohol in the person's blood is relevant
26 evidence, but it is not to be given prima facie effect in indicating
27 whether the person was under the influence of alcohol;

28 (3) Evidence that there was, at that time, eight hundredths of

1 one percent or more, by weight, of alcohol in his or her blood,
2 shall be admitted as prima facie evidence that the person was under
3 the influence of alcohol.

4 ~~(b)~~ (c) A determination of the percent, by weight, of alcohol
5 in the blood shall be based upon a formula of:

6 (1) The number of grams of alcohol per one hundred cubic
7 centimeters of blood;

8 (2) The number of grams of alcohol per two hundred ten liters
9 of breath; or

10 ~~(3) The number of grams of alcohol per sixty-seven milliliters~~
11 ~~of urine; or~~

12 ~~— (4) The number of grams of alcohol per eighty-six milliliters~~
13 ~~of serum.~~

14 (d) A chemical analysis of blood for the purpose of determining
15 the controlled substance or drug content of a person's blood, must
16 include, but is not limited to, the following drugs or classes of
17 drugs:

18 (1) Marijuana metabolites;

19 (2) Cocaine metabolites;

20 (3) Amphetamines;

21 (4) Opiate metabolites;

22 (5) Phencyclidine (PCP);

23 (6) Benzodiazepines;

24 (7) Propoxyphene;

25 (8) Methadone;

26 (9) Barbiturates, and

27 (10) Synthetic narcotics.

28 ~~(c)~~ (e) (1) A chemical analysis of a person's blood or breath

1 ~~or urine~~, in order to give rise to the presumptions or to have the
2 effect provided for in ~~subsection (a)~~ of this section, must be
3 performed in accordance with methods and standards approved by the
4 state ~~division~~ Bureau of Public Health.

5 (A) The Bureau of Public Health shall prescribe, by legislative
6 rules pursuant to article three-a, chapter twenty-nine-a of this
7 code, methods and standards for the chemical analysis of a person's
8 blood or breath.

9 (B) Legislative rules proposed by the Bureau of Public Health
10 must specify the test or tests that are approved for reliability of
11 result and ease of administration using scientific methods and
12 instrumentation generally accepted in the forensic community, and
13 must provide an approved method of administration which must be
14 followed in all such tests given under this section.

15 (C) The Bureau shall review prescribed standards and methods
16 at least every two years to ensure that the methods and standards
17 are approved for reliability of result and ease of administration
18 using scientific methods and instrumentation generally accepted in
19 the forensic community.

20 (2) A chemical analysis of blood ~~or urine~~ to determine the
21 alcohol content ~~or the controlled substance or drug content~~ of blood
22 shall be conducted by a qualified laboratory or by the State Police
23 scientific laboratory of the ~~criminal identification bureau of the~~
24 West Virginia State Police Forensic Laboratory.

25 ~~(d)~~ (f) The provisions of this article do not limit the
26 introduction in any administrative or judicial proceeding of any
27 other competent evidence bearing on the question of whether the
28 person was under the influence of alcohol, controlled substances or

1 drugs.

2 (g) For the purposes of the admissibility of a chemical test
3 under subsection (a):

4 (1) A sample or specimen taken to determine the alcohol
5 concentration of a person's blood, must be taken within two hours
6 from the time of the person's arrest; or

7 (2) For a sample or specimen to determine the controlled
8 substance or drug content of a person's blood, must be taken within
9 four hours of the person's arrest.

10 (h) The results of any test administered pursuant to this
11 section for the purpose of detecting the presence of any controlled
12 substance shall not be admissible as evidence in a criminal
13 prosecution for the possession of a controlled substance.

14 **§17C-5-9. Right to demand test.**

15 Any person lawfully arrested for driving a motor vehicle in
16 this state while under the influence of alcohol, controlled
17 substances or drugs shall have the right to demand that a sample or
18 specimen of his or her blood or breath ~~or urine~~ to determine the
19 alcohol concentration of his or her blood be taken within two hours
20 from and after the time of arrest and a sample or specimen of his
21 or her blood or breath to determine the controlled substance or drug
22 content of his or her blood, be taken within four hours from and
23 after the time of arrest, and that a chemical test thereof be made.
24 The analysis disclosed by such chemical test shall be made available
25 to such arrested person forthwith upon demand.

26 **§17C-5-12. Report to the Legislature.**

27 On or before December 31, 2013, the West Virginia State Police
28 Forensic Laboratory shall submit to the Joint Standing Committee on

1 the Judiciary, a report that includes the following:

2 (1) Recommendations for the minimum levels of those drugs or
3 controlled substances contained in subsection (d), section eight of
4 this article, that must be present in a person's blood in order for
5 the test to be admitted as prima facie evidence that the person was
6 under the influence of a controlled substance or drug in a
7 prosecution for the offense of driving a motor vehicle in this
8 state; and

9 (2) Recommendations for the minimum levels of those drugs or
10 controlled substances contained in subsection (d), section eight of
11 this article, that laboratories approved to test blood for drug or
12 controlled substance content can reliably identify and measure for
13 the concentrations of drugs, controlled substances and their
 metabolites, in blood.